

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





74-2485

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IN THE

**United States Court of Appeals**

FOR THE SECOND CIRCUIT

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INTERNATIONAL CONTROLS CORP.,

*Plaintiff-Appellee,*

vs.

ROBERT L. VESCO,

*Defendant.*

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CIVIL ACTION—ON APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK  
SAT BELOW: HON. CHARLES E. STEWART, JR., U.S.D.J.

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**APPENDIX OF APPELLANT,  
VESCO & CO., INC.**

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HANNOCH, WEISMAN,  
STERN & BESSER,  
*Attorneys for Appellant,  
Vesco & Co., Inc.,*

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Newark, New Jersey 07102

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N. J. Appellate Printing Co., Inc., Woodbridge, N. J. (201) 636-2030

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**PAGINATION AS IN ORIGINAL COPY**

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\* These pleadings are not included in the record on appeal in this case, but are submitted, with the consent of counsel for the parties to this appeal, for the Court's convenience.





INTERNATIONAL CONTROLS CORP. V. ROBERT L. VESCO

74 CIV. 158

DATE

PROCEEDINGS

Date Order  
Judgment No

Apr. 8-74 Filed Complaint and issued summons.

Apr. 9-74 Filed affdvt. and order appointing process server. - Clerk.

Apr. 24-74 Filed pltf's. affdt. of David Butowsky that on April 17, 1974 he mailed a copy of the summons and complaint to Robert Vesco at his listed PO Box #N-8323 by registered mail (copy of receipt attached as exhibit).

May 15-74 Filed movant-intervenor affdt. and notice of motion for an order permitting Vesco and Co., Inc. to intervene. (ret. on date to be fixed by court)

Oct. 8-74 Filed memo end. on movant-intervenor Vesco & Co. motion dated May 15, 1974 to intervene---Motion denied. So ordered, Stewart, J. m/n

Nov. 11-74 Filed default judgment #74,802--ORDERED that pltf. have judgment against deft. as demanded in the complaint; ORDERED that deft. is liable to pltf. the amt. of \$2,900,000 with interest. Stewart, J. m/n judgment entered, clerk.

Nov. 1-74 Filed notice of appeal by Vesco and Co. to the USCA from the order entered on Oct. 8, 1974 which denied the motion of Vesco and Co., Inc. to intervene. (copies mailed).



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUDGE STEWARD

74 CIV. 1500

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO,

Defendant.

74 Civ.

COMPLAINT

RECEIVED  
APR 9 4 13 PM '74  
FBI

Plaintiff, by its attorneys David M. Butowsky and  
Shea Gould Climenko & Kramer, for its complaint herein, alleges:

1. Plaintiff International Controls Corp. ("ICC") is a Florida corporation having its principal place of business in Thomaston, Connecticut. At the times hereinafter mentioned, its shares were publicly held and traded.
2. Defendant Robert L. Vesco ("Vesco") is a citizen of New Jersey who, on information and belief, maintains residences in New Jersey, The Bahamas, and Costa Rica. At times relevant to the complaint herein, Vesco was the President and Chairman of the Board of Directors, owner of more than 24% of the outstanding stock of ICC, and exercised dominance and control over its Board of Directors.
3. The jurisdiction of this Court is invoked under 28 U.S.C. Sections 1331 and 1332. The matter in controversy exceeds the sum or value of \$10,000 exclusive of interest and cost. The acts hereinafter referred to were transacted in interstate commerce and by use of the mails.

4. In or about August, 1968, an opportunity arose for ICC to purchase a substantial block of the outstanding stock of Empire Financial Corporation. At that time, due to various alleged business and legal considerations, ICC was unable to consummate the contemplated purchase for its own account. Therefore, Vesco arranged to purchase said stock in his own name with the expressed intention to hold said shares for resale to ICC.

5. From time to time following his purchase of the Empire Financial Corporation stock, Vesco expressed to ICC his intention to pay to ICC any profit he might make on resale if ICC elected not to purchase such stock from him. This statement was made by him without any intention of carrying out such expressed intention and for the purpose of retaining the stock with a view to resale for his personal profit.

6. In the early part of 1969, but prior to May, 1969, specific arrangements were being made by Vesco and others for a resale of the Empire Financial Corporation stock in a public offering at a substantial profit. Vesco omitted to inform ICC or its Board of Directors of the progress of these arrangements and of the substantial potential profit inherent in the ownership of the Empire Financial Corporation shares held by him, which profit was soon to be realized. Instead, he permitted ICC and its Board of Directors to continue in the belief that if the shares were resold, ICC would participate in any profit as hereinabove set forth, and using his position of dominance over ICC's affairs, prevented ICC from calling upon him to either permit ICC to acquire the shares for resale or making specific arrangements



with him to share in the profit on resale as had been theretofore represented and promised by him.

7. (a) In or about May, 1969, Vesco resold the 300,000 shares of Empire Financial Corporation stock in a public offering, resulting in a gain to him of \$1,450,000.

(b) A further sum of \$1,450,000 representing part of the gain on said sale was paid to other persons pursuant to arrangements made between Vesco and said other persons. No part of said gain was received by ICC.

8. By reason of the foregoing, ICC has sustained damage in the amount of \$2,900,000, no part of which has been paid.

9. The matters hereinabove alleged constituted:

(a) A breach by Vesco of his fiduciary duty to ICC.

(b) An illegal fraud, scheme or manipulative device practiced upon ICC in connection with the purchase and sale of the Empire Financial Corporation shares in violation of the Securities Exchange Act of 1934 and Rule 10b-5 of the Rules of the Securities and Exchange Commission.

WHEREFORE, plaintiff demands judgment in the amount of



\$2,900,000, together with interest and the costs of this action,  
or in the alternative, an accounting by Vesco for all profits  
received by him or others acting in concert with him arising  
from the wrongful transactions hereinabove set forth.

SHEA GOULD CLIMENKO & KRAMER

By 

A Member of the Firm  
Attorneys for Plaintiff  
330 Madison Avenue  
New York, New York 10017  
(212) 661-3200

and

DAVID M. BUTOWSKY  
Special Counsel to Plaintiff  
230 Park Avenue  
New York, New York  
(212) 725-5360

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-vs-

ROBERT L. VESCO,

Defendant.  
-----

:

: 74 Civ. 1588

: NOTICE OF MOTION FOR  
: LEAVE TO INTERVENE

:

:

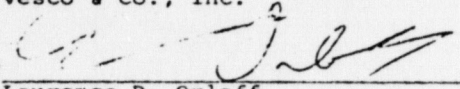
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TO: SHELL, GOULD, CLIMENKO & KRAMER  
Attorneys for Plaintiff, International Controls Corp.  
330 Madison Avenue  
New York, New York 10017

S I R S:

PLEASE TAKE NOTICE that on a date and at a time to be fixed by the Clerk of the Court, we shall move before the United States District Court for the Southern District of New York (Honorable Charles E. Stewart, Jr.) at the United States Court House, Foley Square, New York, New York, for an order permitting Vesco & Co., Inc. to intervene in this action as a party defendant in the form of the answer in intervention, a copy of which is hereto annexed, on the grounds that Vesco & Co., Inc. is entitled to intervene as of right in accordance with F.R.C.P. 24(a) because it is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect its interest in the subject matter of the action and that interest is not adequately protected by existing parties.

HANNOCH, WEISMAN, STERN & BESSER  
Attorneys for Movant-Intervenor,  
Vesco & Co., Inc.

By   
Laurence B. Orloff  
A Partner

-and-

DATED: May 14, 1974

ARUM, FRIEDMAN & KATZ



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	:	
INTERNATIONAL CONTROLS CORP.,	:	74 Civ. 1588
Plaintiff,	:	
-against-	:	<u>ANSWER</u>
ROBERT L. VESCO,	:	
Defendant.	:	
-----	:	

Intervenor, Vesco & Co., Inc., a Delaware corporation, answering the complaint herein, says that:

INTRODUCTION

Intervenor Vesco & Co., Inc., is a Delaware corporation authorized to do business in the State of New Jersey. It was created to implement various estate planning procedures and techniques of the Vesco family and Robert L. Vesco in particular, which procedures and techniques were first discussed on or about 1968. It is a viable separate entity and it is neither a shell for nor the "alter ego" of defendant, Robert L. Vesco. However, in other proceedings in this Court, before the same judge assigned to this matter, in particular the matter of International Controls Corp., plaintiff, vs. Robert L. Vesco, et al., defendants (73 Civ. 2518), the plaintiff has alleged and the Court has preliminarily found (in connection with preliminary injunction proceedings) that "it appears that Vesco & Co. is a corporate

alter ego for defendant Robert Vesco\*\*\*\*" and that "Vesco has deposited into this shell [meaning Vesco & Co., Inc.] the largest portions of his shares of I.C.C.". In addition, plaintiff International Controls Corp. has consistently maintained that Vesco & Co., Inc. and Robert L. Vesco are one and the same and that the Court should treat them as such. The within answer is filed on behalf of Vesco & Co., Inc. for protective purposes in view of the position taken by the plaintiff and the "preliminary" "findings" of this Court. It should not be considered as a concession by this intervenor as to the accuracy of said "findings" or allegations, but merely as demonstrating this intervenor's interest in the subject matter of the action. Vesco & Co., Inc. is accompanying this pleading with a notice of motion permitting it to formally intervene as a party defendant in this matter.

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By way of answer to the complaint herein, intervenor says the following:

1. It admits the allegations of Paragraph 1.
2. Answering Paragraph 2, it admits, on information and belief, that defendant Robert L. Vesco is a citizen and resident of Costa Rica; that he was President and Chairman of the Board of Directors of International Controls Corp. and at one time owned more than 24 per cent of its outstanding stock. Except as so admitted and stated, Paragraph 2 is denied.
3. Paragraph 3 is neither admitted nor denied and plaintiff is left to its proofs.



4. On information and belief, the allegations of Paragraph 4 are denied except to admit that Robert L. Vesco, with the knowledge and consent of International Controls Corp., purchased stock of Empire Financial Corporation for himself and in his own name.

5. On information and belief, the allegations of Paragraph 5 are denied.

6. Answering Paragraph 6, it is admitted, on information and belief, that arrangements were made in 1969 for Robert L. Vesco to sell the Empire Financial Corporation stock. Except as so admitted and stated, Paragraph 6 is denied.

7. Answering Paragraph 7(a), it is admitted that on or about May, 1969, Robert L. Vesco sold his shares of stock of Empire Financial Corporation in a public offering, which resulted in a gain; and, in response to Paragraph 7(b), it is further admitted that part of the gain on said sale was paid to others pursuant to arrangements and understandings which were a matter of public knowledge and prior obligation and which were known to the directors of International Controls Corporation; and it is further admitted that no part of the gain on said sales was received by International Controls Corp., inasmuch as International Controls Corp. was not entitled to same. Except as so admitted and stated, Paragraph 7 and all of its parts is denied.

8. The allegations of Paragraph 8 are denied.

9. The allegations of Paragraph 9 are denied.

#### FIRST SEPARATE DEFENSE

The complaint fails to state a claim upon which relief may be granted and is subject to dismissal based thereon.

SECOND SEPARATE DEFENSE

The plaintiff is estopped to assert the claim set forth in the complaint.

THIRD SEPARATE DEFENSE

The claims set forth in the complaint are barred by the applicable Statute of Limitations.

FOURTH SEPARATE DEFENSE

The claims set forth in the complaint are barred by laches.

HANNOCH, WEISMAN, STERN & BESSER  
Attorneys for Intervenor, Vesco &  
Co., Inc.

By 

Laurence B. Orloff  
A Partner

DATED: May 14, 1974

-and-

ARUM, FRIEDMAN & KATZ



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
INTERNATIONAL CONTROLS CORP., :

Plaintiff, :

-against- :

ROBERT L. VESCO, :

Defendant. :

----- x

DISTRICT COURT  
SEP 11 1974

S. D. OF N. Y.  
Civ. Action No.

74 Civ. 1588 (CES)

*Default*  
JUDGMENT

~~FILED~~

#174802

This action having been commenced by the filing of a complaint on the 8th day of April, 1974, and this court by order dated April 9, 1974, having authorized David M. Butowsky to effect service of process herein on defendant Robert L. Vesco by David M. Butowsky on the 17th day of April, 1974, and proof of such service having been filed in the office of the Clerk of this Court on the 24th day of April, 1974; and

Defendant, Robert L. Vesco, having failed to plead, appear, move or otherwise defend with respect to the complaint herein, and the time for said defendant to appear, answer or otherwise move having expired, and said defendant's default having been noted and entered;

AND, it appearing to the court that there is no just reason for delay in entering the within judgment against defendant Robert L. Vesco;

NOW, on motion of Shea Gould Climenko & Kramer, attorneys for the plaintiff and upon the affidavit of Sheldon D. Camby, sworn to the <sup>27</sup> day of August, 1974; it is hereby

ENTERED

1974

ORDERED, ADJUDGED AND DECREED that plaintiff have judgment against the defendant Robert L. Vesco as demanded in the complaint herein; and it is further

ORDERED, ADJUDGED AND DECREED that defendant Robert L. Vesco be and he hereby is, liable to the plaintiff for damages in the amount of \$2,900,000 together with interest thereon, by reason of the acts alleged in the complaint herein.

Dated: New York, New York

*Aug. 29<sup>th</sup>*, 1974

*Charles E. Cleaver*  
U. S. D. J.

JUDGMENT ENTERED - 9/11/74  
*Raymond J. Burghardt*  
CLERK



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

INTERNATIONAL CONTROLS CORP.,	:	
	:	
Plaintiff,	:	Civ. Action No.
	:	74 Civ. 1588 (CES)
-against-	:	
	:	CLERK'S CERTIFICATE
ROBERT L. VESCO,	:	<u>NOTING DEFAULT</u>
	:	
Defendant.	:	

----- x

I, RAYMOND F. BURGHARDT, CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, do hereby CERTIFY that the docket entries in the above-captioned action indicate that the Summons and Complaint herein were filed on April 8, 1974 and the defendant Robert L. Vesco was served with a copy of the Summons and Complaint on April 17, 1974.

I further CERTIFY that the docket entries indicate that defendant Robert L. Vesco has not filed an answer and has not otherwise moved with respect to the Complaint herein and that the time of defendant Robert L. Vesco to answer or move with respect to the said Complaint has expired.

The default of the defendant Robert L. Vesco is hereby noted.

Dated: New York, New York

*Aug. 29<sup>th</sup>*, 1974

*Raymond F. Burghardt*  
Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
INTERNATIONAL CONTROL CORP., :  
Plaintiff, :  
vs. : 74 Civ. 1588  
ROBERT VESCO, VESCO & CO., INC., :  
Defendant. :

-----X  
Before:

HON. CHARLES E. STEWART, JR.,  
District Judge.

New York, October 2, 1974,  
4:30 p.m.

APPEARANCES:

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.,  
Attorneys for plaintiff;  
Sheldon D. Carthy, Esq., and  
Lois Syler Yohann, Esq., of Counsel

MINOCH, WEISMAN, STEIN & BESSER, ESQS.,  
Attorneys for defendant Vesco  
& Co., Inc.  
Laurence Orloff, Esq., of Counsel



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THE COURT: I want to apologize for keeping you waiting.

MR. ORLOFF: Your Honor, this is a motion by Vesco & Co. to intervene in the pending action that was filed some time in April I believe of this year by International Controls against Robert Vesco and Robert Vesco only. The basis for the motion as set forth in our moving papers, to which is attached a copy of the answer we will propose to file, is explained I think quite adequately in our brief but I simply wanted to add a couple of additional points to that and to emphasize to the court an argument that I made, I believe, in another context in a related case when I sought on behalf of Vesco and Co. to participate, as your Honor may recall, on the damage hearing in the other ICC case against some 11 defendants.

The fact of the matter is in this case that based upon the preliminary findings by your Honor in the companion case, based upon statements made on behalf of ICC in that companion proceeding which simply can't be ignored, and based upon the, at best, ambiguous statements by ICC in their brief in connection with this motion, it appears to be a serious possibility, if not probability, that ICC is going to take the posi-

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tion that Vesco & Co., as your Honor has preliminarily ruled, is in fact the alter ego of Robert Vesco, is in fact Robert Vesco --

THE COURT: The Court of Appeals said so too.

MR. ORLOFF: The Court of Appeals affirmed your Honor's preliminary findings which were made, as I am sure your Honor recalls, on the basis of an application for preliminary relief and not with any plenary hearing

THE COURT: That is right.

MR. ORLOFF: Given all that and given the court's inclination -- and I believe your Honor and I have had colloquy on this in the other case and your Honor says, as I recall it, that your inclination there, you were open to be persuaded by evidence, but we haven't reached that point in any hearing. Given the ambiguous position taken by ICC --

THE COURT: What is ambiguous about their position?

MR. ORLOFF: What is ambiguous about their position, it seems to me, your Honor, in their brief in this case, is their statements that while it is a logical possibility -- and I am quoting from them --



THE COURT: Are you saying that in light of what I said in this other matter that you really represent Robert L. Vesco?

THE COURT: You seem to say that in some  
of your papers.

THE COURT: I want you to look at page 7 of your reply memorandum.

MR. OPLOFF: Yes, sir.

"Unless plaintiff can somehow," and so on.  
"it is difficult to understand why this litigation  
cannot be defended by Mr. Vesco's representatives."

Then the last sentence of your memorandum at the bottom of page 8, you say, and I am not quoting

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the entire sentence, "but I say Vesco & Co. is entitled to intervene not only to contest the issue of damages but the purported liability of defendant Robert L. Vesco as well."

I am confused. Do you purport to represent Robert L. Vesco in this matter?

MR. ORLOFF: No, sir. If I may, let me try to explain. The quote on page 7, your Honor, must be taken in context with the proceeding sentences.

THE COURT: Let's leave out the semantics. I take it you do not represent Vesco?

MR. ORLOFF: We do not represent Robert L. Vesco. We represent Vesco & Co. If it is made clear that Vesco & Co. is at least at this point a separate, independent entity, in no way to be deemed at this point the alter ego of Robert Vesco, that in the event any action is brought against Vesco & Co. on this cause of action in any way that Vesco & Co. will have the full opportunity to defend itself on the merits of the claim and on the amount of damages, then I would not be here. But I don't think ICC has taken that position in fairness.

THE COURT: I think they have taken an entirely appropriate position that in light of what



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has happened, that maybe your client is Vesco and maybe it isn't. It seems to me, Mr. Orloff, that you are in this position:

To intervene you have to show an interest. You can show an interest, if you so desire, by indicating that you represent Robert L. Vesco in addition to Vesco & Co., Inc. Obviously, that would constitute an interest. Short of that, it seems to me your position -- you say they have been ambiguous; it seems to me you are being ambiguous. You are saying that "We don't represent Robert L. Vesco but, on the other hand, we want to be present in this lawsuit so that if things happen we can do something."

Nothing has happened yet, it seems to me, which prejudices you if your only client is Vesco & Co., Inc.

MR. ORLOFF: What prejudices us is plainly and simply the position taken by ICC quite consistently in the other case, and reflected in your Honor's ruling that Robert L. Vesco, in your Honor's preliminary findings, will somehow be transformed into Vesco & Co. for the purpose of collecting from Vesco & Co.'s assets on a judgment against Robert L. Vesco.

THE COURT: That is a possibility.

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What I am suggesting to the court is that it seems to me in fairness to Vesco & Co., which is at least de facto a separate, independent entity, it is an existing corporation, it is not Robert L. Vesco, also known as, it was formed, it exists, it is a viable entity, that entity should have the right to protect itself.

THE COURT: I think it will have the right to protect itself in the event we reach that point. Right now we are not at that point. I don't mean to cut you off. I have read your papers and I think I know this matter fully, and it is late in the day.

MR. ORLOFF: May I make an additional point?

THE COURT: I was going to suggest that I know your points. Have you got something new that I haven't read?

MR. ORLOFF: I think so.

I think, your Honor, that to simply permit -- and I am speaking from the standpoint primarily of representing Vesco & Co., but I think this should also be said -- to permit a complaint of this sort, which is on its face defective, which fails to state a cause of action, to result in a judgment which can be the basis for going against the assets of our client is just



patently unfair. There is no cause of action in this complaint.

THE COURT: I would agree weith that entirely. If there is no cause of action stated here, then nothing can be done to you.

MR. ORLOFF: As long as we have the opportunity to raise that at the appropriate time.

THE COURT: At the moment, Mr. Orloff, I don't know because I haven't been fully made aware of the pros and cons, whether or not a cause of action is stated. I happen to think a cause of action is stated, but I am open to argument on that.

But, in any event, if I am wrong on that, if no cause of action is stated and I think there is, your client is not going to get into trouble because there are other people in this courthouse who will straighten me out.

MR. ORLOFF: The problem I have at the moment, your Honor --

THE COURT: So that it seems to me the question you are raising is in all respects premature.

MR. ORLOFF: If my client, Vesco & Co., has the right to challenge the existence of the cause of action at some point in time, if that is what your

Honor means by premature, then I can see an accept your Honor's point. At the moment there is nobody raising that point. There is nobody pointing out to the court that there is no claim here really of corporate opportunity.

THE COURT: Of course, the question will be presented to you if and when somebody comes after your client to try to get some of your assets, and then you will have full opportunity to litigate everything.

MR. ORLOFF: If that is the position, then I am satisfied.

THE COURT: Of course, that is not to be the case.

MR. ORLOFF: Your Honor, I certainly don't presume to take the court's time, particularly late in the day, to argue things that are academic. I suggest to your Honor the plaintiff's brief was ambiguous as to what position the plaintiff would take. I think your Honor's statement clears up that ambiguity.

THE COURT: Let me hear from Mr. Camhy.

MR. CAMHY: Your Honor, the complaint in this action asserts that one Robert Vesco, while a fiduciary of a corporation, appropriated to himself a



corporate opportunity and profited from it by misleading the board of directors of a corporation as to how he intended to conduct himself with respect to that corporate opportunity. It says that he personally derived 1-1/2 million dollars from that transaction and that another 1-1/2 million dollars was taken by others because of the way he conducted himself.

The person named in that complaint is Robert Vesco. Vesco & Co. holds certain assets of Robert Vesco. Well, we claim that it does. We have claimed that it does. No claim is made in this case but let's face it, we claim they hold assets of his. They claim they are not his assets. They claim they are his children's assets, that is, they are the trustees of certain trusts that are the stockholders of Vesco & Company.

Without rehearsing everything that went on in Mr. Orloff's argument, I think it is pretty simple to say that a person who holds property of a defendant in an in persona action has no standing to raise substantive defenses for that defendant.

THE COURT: The question that bothers me and which I was trying to put to Mr. Orloff, suppose I permit him to intervene, I take it he will intervene

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not because he is representing Vesco but because he is representing Vesco & Co., Inc. And there is no question in this lawsuit about the liability of Vesco & Co., Inc., is there?

MR. CAMHY: No, your Honor.

THE COURT: The question about Vestco & Co., Inc. is whether or not you can go after them assuming liability is established, and then you can show that Vesco & Co., Inc. owns property which is really Vesco's, isn't that what it comes down to?

MR. CAMHY: Yes, your Honor. Without being too picayune, let me say this: You say "Go after Vesco & Co., Inc." In truth, if the time ever comes for their involvement it is not really them we are going after; we are going after hsi property.

THE COURT: Which you say is in Vesco & Co., Inc.

MR. CAMHY: Which happens to be standing in their name.

THE COURT: Mr. Orloff's point would be that -- and I don't know whether he puts it in terms of ambiguity -- but he says he ought to be given the chance of arguing this case, because what you are doing is going after the property of Vesco in Vesco



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& Co., Inc. It seems to me the more accurate way to describe the situation is you have to first establish liability and, having done so, you can seek Vesco's assets wherever you can find them.

MR. CAMMY: Precisely, your Honor.

Let's get to really the critical issue on any situation like this. They say that the fundamental power of any court is its default power. I say to your Honor that if you want to focus on the problem here, the fact is that Mr. Vesco is defaulting. And this court will have, or we will, and I think we already have entered a judgment, but we will submit a judgment. In any case, it will be a default judgment. We are going to take that judgment and we may go to a bank. We may go some place where he has a numbered account and get into a contest as to whether his account is his account or not.

THE COURT: Or you may go to Vesco & Co., Inc ?

MR. CAMMY: Yes, and we say that is his property and they say they are not.

THE COURT: We don't have to debate this further.

MR. CAMMY: I want to get to one issue

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and maybe I am borrowing trouble but let's get it clear. He says the complaint does not state a claim and can he ever raise that. Well, your Honor, I am frank to say he can't raise that ever. It is none of his business whether it states a claim any more than it is a bank's business whether it states a claim. I state to your Honor it states a claim or I wouldn't have put it down there. I don't think it is their business to say to anybody.

THE COURT: I don't know about that, Mr Camhy. I would suppose that as a general proposition if a default judgment is entered and pursuant to that judgment proceedings are brought against somebody else, that that somebody else doesn't have the opportunity to raise the claim that no cause of action was stated. I am not sure of that. I would suppose it is possible that there might be a way to raise a claim that no cause of action was stated and that therefore you can't come after me. I don't think we have to worry about that at this point.

It seems to me that the situation we are in today, Mr. Orloff and Mr. Camhy, is this: I am fully aware of the problems which are involved in this matter. I know who Vesco is. I know what



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Vesco & Co. is.

Of course, you are not going to take the position that you are Vesco, which you aren't.

And, of course, if Mr. Camhy reaches the point where he thinks he can go after Vesco & Co., Inc. to satisfy a judgment against Vesco, you are going to have the fullest opportunity to make whatever presentation you want. The question of whether or not you can argue that there is a cause of action stated here, it seems to me, is one which you can then raise at that point. Mr. Camhy says he doesn't think you can. In any event, I don't think you are entitled to come into this cause of action, this lawsuit, at this point. I am going to deny your motion to intervene in light everything I have said.

All right, thank you, gentlemen.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,	:	
Plaintiff,	:	1588
-against-	:	<u>NOTICE OF APPEAL</u>
ROBERT L. VESCO,	:	
Defendant.	:	

TO: STUBB, GOULD, CHENINCO & KRAMER, ESQS.  
Attorneys for Plaintiff, International  
Controls Corp.  
330 Madison Avenue  
New York, New York 10017

S I R S:

PLEASE TAKE NOTICE that Vesco & Co., Inc., hereby  
appeals to the United States Court of Appeals for the Second  
Circuit from the whole and every part of the order of the Hon.  
Charles E. Stewart, dated and entered in this action on October  
8, 1974, which order, inter alia, denied the motion of Vesco &  
Co., Inc. to intervene as of right in accordance with Rule 24(a)  
of the Federal Rules of Civil Procedure.

HANNOCH, WEISMAN, STERN & BESSER  
744 Broad Street  
Newark, New Jersey 07102  
(201) 621-8800

By Laurence B. Orloff

ARON, FRIEDMAN & KATZ  
450 Park Avenue  
New York, New York 10022

DATED: November 1, 1974

Attorneys for Vesco & Co., Inc.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

73 Civ. 2518

: PLAINTIFF'S PROPOSED FIND-  
: INGS OF FACT AND CONCLUSIONS  
: OF LAW IN SUPPORT OF ITS  
: MOTION FOR A PRELIMINARY  
: INJUNCTION AND IN OPPOS-  
: TION TO THE MOTIONS OF  
: CERTAIN DEFENDANTS TO DIS-  
: MISS THE COMPLAINT

Plaintiff International Controls Corp. ("ICC"), by its attorneys David M. Butowsky and Shea Gould Climenko & Kramer respectfully submits proposed findings of fact and conclusions of law in connection with the following motions submitted to the Court, on June 27, 1973:

1. ICC's motion for a preliminary injunction restraining the transfer of certain assets by defendants Fairfield General Corporation, Fairfield Aviation Corporation, Skyways Leasing Corporation, Robert L. Vesco, Vesco & Co., Inc., Frank G. Beatty, Joel Grady and Alwyn Eisenhower.
2. ICC's motion to preliminarily enjoin the prosecution by certain of the defendants of two actions in the State of New Jersey entitled "Fairfield General Corporation v. International Controls Corp." (N.J. Sup. Ct., Chan. Div., Essex Co.) and "Skyways Leasing Corporation v. International Controls Corp." (N.J. Sup. Ct., Law Div., Essex Co.).
3. ICC's motion to preliminarily enjoin prosecution of the action entitled "Vesco & Co., Inc. v. Laurence B. Richardson, et al.," (N.J. Sup. Ct., Chan. Div. Bergen Co.).

4. Motion of defendant Vesco & Co., Inc. for dismissal of the Complaint for lack of subject matter jurisdiction, lack of personal jurisdiction and insufficiency of service of process.
5. Motion of defendant Alwyn Eisenhower to dismiss the Complaint for lack of subject matter jurisdiction, personal jurisdiction and insufficiency of service of process.

#### FINDINGS OF FACT

##### The SEC Action and Entry of Permanent Injunction

1. In November 1972, the Securities and Exchange Commission instituted the action entitled SEC v. Robert L. Vesco, et al., '72 Civ. 5001 (CES) ("SEC action"). In that proceeding, application was made to have a receiver appointed for ICC. The said application, as well as the claim by the SEC against ICC, was resolved by a Final Judgment of Permanent Injunction and Appointment of Special Counsel and Directors dated March 16, 1973 ("Final Judgment") in which this Court appointed Special Counsel and a new interim independent Board of Directors for ICC. The Final Judgment directed Special Counsel to conduct a full investigation into the affairs of ICC, report to this Court and the Securities and Exchange Commission (the "SEC") and take all appropriate action, including, but not limited to, the institution and prosecution of suits on behalf of ICC to recover all assets or monies improperly used, taken, wasted, misappropriated or paid to anyone without appropriate authorization of the Board of Directors of ICC, or in breach of duties owed to ICC. The judgment further provided that:



"... pending the investigation and accounting by the Special Counsel, he shall take immediate, necessary or appropriate action to protect International Controls' claims, interests and rights and pursue all possible claims against the defendants herein or any other persons including, but not limited to, the commencement of legal proceedings to prevent the dissipation or flight of any funds or other assets, the placing of a stop transfer order on securities beneficially owned or controlled by said defendants and/or the institution of appropriate action to freeze and preserve the assets of said defendants or others who may be obligated to International Controls. .

By an Order of this Court dated March 25, 1973 George D. Gould, Charles S. Desmond, John Mosler, Allen M. Shinn and Joseph Weiner were named as interim directors of ICC and David M. Butowsky as Special Counsel.

Facts Surrounding Commencement of  
Instant Action and Request for  
Injunctive Relief

2. The instant action, instituted on June 7, 1973, appears to be a direct result of the above referred to directions to Special Counsel and charges defendants with violations of various provisions of the Securities Exchange Act of 1934, 15 U.S.C. §78a et seq., ("the 1934 Act") and the rules and regulations promulgated thereunder:

3. Special Counsel claims to have found that:

(a) Defendant Robert L. Vesco ("Vesco") and his group had engaged in an unlawful scheme involving the purchase and sale of securities to use ICC to obtain for themselves the benefit and control of I. O. S. Ltd. ("I.O.S.") and related companies, and other assets of ICC, including the stock of Fairfield General Corporation ("Fairfield General").



and its subsidiaries, Fairfield Aviation Corporation ("Fairfield Aviation") and Skyways Leasing Corporation ("Skyways"), whose sole business is the ownership and operation of a Boeing 707, Register Number N11RV.

(b) The principal architect of that scheme, defendant Vesco, had failed to appear to plead to a criminal indictment in New York and was a fugitive from justice, living outside of the United States to avoid the jurisdiction of the Courts.

(c) The principal asset of Fairfield General, Fairfield Aviation and Skyways, the Boeing 707, has been removed from the United States, and attempts are being made to effectuate its sale. Once converted to cash, this asset could quickly disappear.

(d) The only other known asset of defendant Vesco that could be available to satisfy a judgment is his stockholdings in ICC and most of that has been transferred to his corporation, defendant Vesco & Co., Inc. ("Vesco & Co.")

#### The Fraudulent Scheme Alleged

4. ICC is a publicly held Florida corporation whose common stock and warrants were listed on the American Stock Exchange. Defendant Vesco was an officer, director and controlling stockholder of ICC holding approximately 25% of ICC's stock. Prior to January 1, 1971, plaintiff's business consisted in part of the ownership and operation of Fairfield Aviation, a New Jersey corporation and then a wholly-owned subsidiary. Fairfield Aviation in turn wholly-owned Skyways, also a New Jersey corporation.

5. It appears from the complaint and the affidavits submitted in support of plaintiff's motion that sometime during 1971 defendant Vesco formulated a plan by which he would cause ICC to acquire and pay the expenses for a Boeing 707 airplane which would be used as his personal transportation vehicle, and for business largely unrelated to the business of ICC, and pursuant to that plan would cause ICC to transfer said airplane, together with other assets of substantial value, to a corporation controlled and dominated by him, thereby permitting him to have all the enjoyment of ownership of the airplane at the expense of ICC, that defendant Grady, Beatty, Clay and Dodd, who were all officer-director fiduciaries of ICC and/or its wholly-owned subsidiaries (Fairfield General, Fairfield Aviation and Skyways), joined with Vesco in formulating and carrying out that plan, and that Beatty was and is the chief executive officer of defendant Fairfield General and Grady the chief executive officer of defendant Skyways.

6. It further appears that pursuant to said plan, the following steps were taken:

(a) On December 23, 1970, Vesco caused ICC to contribute to Skyways certain aircraft assets (not the Boeing 707) having an aggregate market value of \$363,000.

(b) On June 15, 1971, Vesco caused Skyways to purchase the Boeing 707 from Pan American Airways for \$1,375,000 of which \$343,750 was paid with funds contributed to Skyways by ICC and the balance owed to the seller in twenty quarterly instalments.



(c) Between June 1971 and December 8, 1971, Vesco caused ICC to advance approximately \$1,000,000 toward the cost of acquiring the Boeing 707 and the refurbishment and improvement of that plane. During the three months ended September 30, 1971, Skyways leased the plane to ICC at a total cost of \$439,000. By lease dated as of October 1, 1971, ICC agreed to lease the plane from Skyways for a period of five years at an approximate gross rental of \$3,500,000, the larger portions of which were to be paid as monthly rental during the first two years of the lease (\$100,000 a month for the first three months, \$83,000 per month for the next twelve months). Under the terms of the lease (i) ICC was responsible for service, maintenance, overhaul scheduling and personnel; (ii) Skyways had the absolute right to terminate the lease any time it wished to sell or transfer ownership of the plane; and (iii) all improvements to the plane paid for by ICC became the property of Skyways.

(d) The "refurbishing" of the airplane was such as to make it suitable only as an entertainment and transportation center for Mr. Vesco personally. Its seating capacity was reduced from 150-passengers to approximately 55; entertainment facilities such as a discotheque, dance floor, hi-fi stereo, sauna and other amenities were installed



(c) In November 1971, as part of the aforesaid plan, defendant Vesco caused still another corporation to be organized. This corporation was Fairfield General. It had no assets. At an ICC Board of Directors meeting held December 8, 1971, the ICC Board of Directors adopted resolutions purporting to accomplish the following:

(i) Transfer of all of the stock of Fairfield Aviation owned by ICC to the newly organized Fairfield General. This transfer was made in exchange for stock of the newly organized Fairfield General.

(ii) Declare a purported dividend by ICC to its own stockholders (of which Robert L. Vesco personally owned 25%) of the stock of Fairfield General. This "dividend was accompanied by a 1933 Act registration and prospectus which accomplished an instantaneous "spin-off" launching Fairfield General as a separately publicly held and traded corporation.

By the foregoing means ICC was divested of its ownership and control over Fairfield Aviation, its aviation business, Skyways and the Boeing 707. A new corporate complex was created wholly apart from ICC in which all of the Fairfield Aviation assets, including the Boeing 707, were held. The said complex was controlled by Vesco through his 25% ownership of its stock and the installation of a Board of Directors of his choosing prior to the spin-off, consisting of his co-conspirator defendants Grady, Clay, Dodd and Beatty. This new corporate complex was now the beneficiary of the funds

expended by ICC for the acquisition and improvement of the Boeing 707 and was the lessor under the lease, a lease under which ICC had spent and would spend hundreds of thousands of dollars as escalated rentals during the early months and to pay for the improvements to the Boeing 707, but which provided that if the plane were sold or transferred, ICC's rights as lessee could be terminated on five days notice and would forfeit all of the expenditures it had made for improvements.

(f) Two former directors Laurence Richardson, Jr. and Malcolm McAlpin have given sworn statements in this Court that their consent to the aforesaid exchange and "dividend" was secured by misstatements of fact and omissions of material statements of facts. Principal among these are that:

(i) They were not told the truth about the amount spent on refurbishing the plane, or about the sumptuous nature and extent of the renovations.

(ii) They were not told the onerous terms of the lease to Skyways.

(iii) They were told that the plane would be used and paid for by I.O.S. and would not be an expense to ICC, or used by Mr. Vesco for his personal transportation.

(iv) At the time of the distribution of the Fair-

#### Rider A

The dividend in kind was paid by The Marine Midland Bank by mailing it from its office in New York. Presumably, the prospectus which accompanied the dividend to the stockholders was mailed from New York.

self that said prospectus contained a number of false



and misleading statements, among which were the following:

expended by ICC for the acquisition and improvement of the Boeing 707 and was the lessor under the lease, a lease under which ICC had spent and would spend hundreds of thousands of dollars as escalated rentals during the early months and to pay for the improvements to the Boeing 707, but which provided that if the plane were sold or transferred, ICC's rights as lessee could be terminated on five days notice and would forfeit all of the expenditures it had made for improvements.

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(i) They were not told the truth about the amount spent on refurbishing the plane, or about the sumptuous nature and extent of the renovations.

(ii) They were not told the onerous terms of the lease to Skyways.

(iii) They were told that the plane would be used and paid for by I.O.S. and would not be an expense to ICC, or used by Mr. Vesco for his personal transportation.

(g) At the time of the distribution of the Fairfield General shares as a dividend to the stockholders, there was issued and delivered a prospectus under the Securities Act of 1933. / It appears from affidavits

Rider A



submitted on this motion and from the prospectus itself that said prospectus contained a number of false and misleading statements, among which were the following:

(i) It stated that the cost of refurbishing the plane was \$350,000 when, in fact, it was more than \$600,000.

(ii) It concealed the fact that the improvements to the Boeing 707 were designed to the satisfaction and personal taste of Robert L. Vesco, would in effect transform the plane into a pleasure palace for him and render it thereafter commercially useless.

(iii) It failed to disclose that the \$1,000,000 spent in the acquisition and refurbishing of the plane had been expended without authorization of ICC's Board of Directors until the purported "ratification" of December 8, 1971 by which time it was a fait accompli.

(iv) It failed to set forth the termination and modification provisions of the lease with Skyways referred to above.

(v) It stated that the reason for the dividend was that "the General Aviation business did not fit into the operations of any of the reconstituted subsidiaries [of ICC]." when the real reason was to place the aviation assets under the absolute control of defendant Robert L. Vesco so that he could have the Boeing 707 for his personal use.

(h) The dividend of Fairfield General shares resulted in a spin-off of much more than \$1,000,000 of ICC's former assets without putting any true value into the hands of the stockholders who received it (other than Vesco). The stock itself had little inherent value. The principal business of the corporation was its lease with ICC and the principal use of the plane was to fly Vesco from place to place in luxury. The stock had an insubstantial market value and, unlike ICC stock, the stock of Fairfield General was not listed on any exchange.

(i) During 1971 and 1972 (and apparently up to the present), the Boeing 707 was used by Mr. Vesco and members of his family for trips to different places around the world. Most of the destinations are serviced by commercial airlines. The 707 is too large to land in small airports not so serviced.

7. The facts recited in "5" and "6" above are not controverted by the papers submitted in opposition to the instant motions.

8. The exchange of shares between ICC and defendant Fairfield General in which ICC parted with its stock in Fairfield Aviation (and with it the stock and assets of Skyways) and received in turn from Fairfield General stock in Fairfield General was a transaction in securities within the meaning of Section 10(b) of the 1934 Act in that it was allegedly authorized and entered into as part of a scheme in violation of the 1934 Act in which it was contemplated that the Fairfield General securities would be spun-off as a dividend through ICC stockholders to the public



with the use of a 1933 Act prospectus.

9. Fairfield General, Fairfield Aviation and Skyways were major participants in the scheme alleged in that they were the very instruments by which ICC was looted of assets. Defendant Fairfield General, a corporation whose Board of Directors consisted of defendants Grady, Clay, Dodd and Beatty, received, and still holds, the very assets lost by ICC in the transaction, viz, the stock of Fairfield Aviation and through it the stock of Skyways. Defendants Fairfield Aviation and Skyways are mere corporate conduits through which Fairfield General holds these assets. They are necessary parties in order for this Court to afford relief against Fairfield General.

Defendant Vesco & Co.

10. The complaint alleges that Vesco and his children transferred certain assets to Vesco & Co. From papers submitted in support of Vesco & Co.'s motion to dismiss, it appears that in July, 1972 (a time when he was under intensive SEC investigation), Vesco caused to be created defendant Vesco & Co., a Delaware corporation, and contributed 800,000 shares of ICC common stock to said corporation. The basic activity of Vesco & Co. consists of the ownership of Vesco's ICC stock. Robert Vesco is the owner of the preferred shares of Vesco & Co. His wife, Patricia J. Vesco, as custodian for their children, is the owner of all of the voting and non-voting common stock of that company. The ICC stock placed in Vesco & Co. by Vesco may be the only property from which a judgment against him may be satisfied.

11 On the papers before the Court it appears that



Vesco & Co. is a corporate alter ego for defendant Robert Vesco and was created by him during and after the perpetration of the fraud charged in the complaint. Defendant Vesco was a defendant in the action brought by the SEC and this Court had personal jurisdiction over him in that action. He did not object to the entry of the Final Judgment against ICC and has made no attempt to modify or vacate said judgment. Rather, he has attempted to attack said Final Judgment in the New Jersey courts through Vesco & Co.

Defendant Eisenhower

12. Defendant Alwyn Eisenhower is the principal pilot of the 707 and the personal pilot of Robert Vesco. The complaint charges Mr. Eisenhower with aiding and abetting all of the violations alleged therein. Service of the summons and complaint upon Mr. Eisenhower was made by the U. S. Marshal in New Jersey on June 19, 1973.

13. On March 7, 1973, plaintiff ICC had entered into an agreement with defendant Eisenhower pursuant to which defendant Eisenhower agreed to fly the Boeing 707 at ICC's request for all flights which ICC deemed necessary while the Boeing 707 is leased to and under the control of ICC. Pursuant thereto, plaintiff ICC instructed defendant Eisenhower to fly the Boeing 707 to Newark and paid defendant Eisenhower expense money to do so. Defendants Grady and Beatty wrongfully instructed defendant Eisenhower to fly the Boeing 707 to Beirut and thence to Nassau, and defendant Eisenhower complied. This was done secretly and without prior notice to ICC despite the fact that negotiations were then being conducted between defendants Grady, Beatty and counsel to ICC.

Necessity For Injunctive Relief  
Restraining Transfer of Assets

14. Defendants Beatty and Grady have informed counsel to ICC that Skyways was attempting to sell the Boeing 707. Attempts to sell the Boeing 707 have continued to the present time. Unless this Court acts to freeze the assets involved, vis, the stock of Fairfield Aviation held by Fairfield General and the assets of Fairfield Aviation including the stock of Skyways Leasing and the Boeing 707 and defendant Vesco's stock in ICC there is a grave danger that said assets will be removed from the jurisdiction of the Court or otherwise disposed of and, therefore, there will be no assets available to give meaningful compliance to any order or judgment of the Court in enforcing the Securities Exchange Act of 1934 or for satisfaction of any money judgment recovered. In addition, it appears necessary to enjoin the transfer of the ICC stock held by Vesco & Co. in order to prevent Vesco from perpetrating further frauds by use of his ownership of what has heretofore been a controlling 25% interest in ICC.

15. Fairfield General and its subsidiaries have no assets or business except those received from ICC. They are not meaningful business entities whose day-to-day affairs would be interrupted by the injunction sought. They are merely corporate repositories of the proceeds of the transaction with ICC which is the subject of the complaint herein.



16. Vesco & Co. is a corporation created by Mr. Vesco which is owned by him, his wife and their children. It is supposedly managed and controlled by his wife and his secretary. Vesco has deposited into this shell the largest portion of his shares of ICC. Vesco & Co. is not a meaningful business entity whose day-to-day affairs would be interrupted by the injunction sought herein.

Necessity For Enjoining  
State Court Actions

17. (a) In February 1973, at the demand of the SEC, this Court enjoined ICC from making any further payments pursuant to the lease with Skyways covering the Boeing 707 and no such payments were thereafter made.

(b) The Final Judgment of March 16, 1973 prohibited ICC from holding any annual meeting of stockholders without the consent of the SEC and until its proxy material, including accompanying financial information, is found by the SEC to be in accordance with the Securities Exchange Act of 1934.

18. On or about May 25, 1973, Fairfield General, Fairfield Aviation and Skyways, who appear to be dominated and controlled by Vesco and defendants Beatty, Clay, Dodd and Grady, the directors selected by him, commenced an action against ICC seeking to enforce certain air taxi and management agreements made between those companies and ICC at a time when said companies were wholly owned subsidiaries of ICC and as part of the



alleged plan and conspiracy set forth above. On June 5, 1973, Skyways caused an action to be brought in a New Jersey state court seeking to recover over \$2,000,000 from ICC claimed to be due under the Boeing 707 lease.

19. To permit Fairfield General, Fairfield Aviation and Skyways to enforce the agreements with ICC - especially the lease covering the Boeing 707 - would be in effect to permit said defendants to continue to effectuate and reap the fruits of the alleged violations of the 1934 Act before this Court could finally determine this action on the merits.

20. On June 7, 1973, Vesco & Co. brought a stockholders' action in a New Jersey state court seeking to have the Court-appointed Board of Directors removed and an election of directors held and also asserting derivative claims on ICC's behalf against certain of ICC's former directors.

21. Vesco & Co.'s New Jersey action is a direct attack on this Court's Final Judgment against ICC and, in effect, asks the Courts of New Jersey to invalidate and repeal said Final Judgment. In exercise of this Court's paramount authority under the 1934 Act and at the behest of the SEC acting pursuant to the same statute, this Court appointed Special Counsel and an interim Board of Directors and expressly forbade the holding of a meeting of stockholders for the election of a new board of directors until the SEC had consented to the holding of such a meeting and cleared proxy material in accordance with the Securities Exchange Act of

1934. Vesco & Co.'s New Jersey action if it were to succeed would violate the express provisions of this Court's judgment.

22. The derivative claims asserted in Vesco & Co.'s New Jersey action also conflict with and obstruct the effectuation of this Court's Final Judgment against ICC which was entered in lieu of the appointment of a Receiver. Rather than appointing such a Receiver, this Court appointed Special Counsel to vindicate the rights of ICC against its former directors. Had a Receiver been appointed, this Court would have had the power under 23 U.S. §2283 to protect and effectuate its judgment by enjoining stockholder derivative suits which tended to harass or interfere with the Receiver's work. Since the duties of Special Counsel in asserting corporate rights and pursuing corporate remedies against former directors are equivalent to those which would have been imposed on a Receiver, an injunction against conflicting derivative actions brought in the name of ICC by stockholders is as much an appropriate remedy as it would have been had a Receiver been appointed.



CONCLUSIONS OF LAW

A. ICC's motion for a preliminary injunction restraining the transfer of certain assets by defendants Fairfield General, Fairfield Aviation, Skyways, Vesco, Vesco & Co., Beatty, Grady and Eisenhower

1. Plaintiff has demonstrated for purposes of the pending motions that the wrongdoings alleged in the complaint were accomplished by a transaction or transactions within the meaning of Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and this Court, therefore, has jurisdiction of this action under Section 27 of the 1934 Act.

2. There is a reasonable expectation that the policy of the 1934 Act will be thwarted unless the preliminary injunctive relief requested is granted. Plaintiff has presented a strong prima facie case to justify the discretionary issuance of such relief.

3. The preliminary injunctive relief requested is necessary in order to preserve the status quo pending final determination of this action.

4. Unless the preliminary injunctive relief requested is granted, plaintiff will be irreparably harmed in that any judgment or recovery by plaintiff may be rendered meaningless.

5. Defendants against whom relief is sought have failed to demonstrate any equivalent countervailing harm which would

result by the granting of the preliminary injunctive relief requested.

B. ICC's motion to preliminarily enjoin prosecution of New Jersey state court actions commenced by Fairfield General and Skyways

6. Plaintiff has demonstrated for purposes of the pending motions that the wrongdoings alleged in the complaint were accomplished by a transaction or transactions within the meaning of Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and this Court, therefore, has jurisdiction of this action under Section 27 of the 1934 Act.

7. The preliminary injunctive relief requested is necessary in order to enjoin the continuation of the frauds and violations of the Securities Exchange Act of 1934 alleged in the complaint and, therefore, is expressly authorized by the said Act and is necessary in aid of the exclusive jurisdiction conferred upon this Court by said Act.

C. ICC's motion to preliminarily enjoin the prosecution of the New Jersey state court actions commenced by Vesco & Co.

8. Plaintiff has demonstrated for purposes of the pending motions that the wrongdoings alleged in the complaint were accomplished by a transaction or transactions within the meaning of Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and this Court, therefore, has jurisdiction of this action under Section 27 of the 1934 Act.



9. The action commenced by Vesco & Co. constitutes a collateral attack on the Final Judgment of Permanent Injunction Appointment of Special Counsel and Directors entered by this Court in the action entitled Securities and Exchange Commission v. Robert L. Vesco, et al., 72 Civ. 5001 (CES) and, therefore, the preliminary injunctive relief requested is necessary in order to protect and effectuate said judgment.

D. Motion by Vesco & Co. for dismissal of the complaint for lack of subject matter jurisdiction and lack of personal jurisdiction

10. The complaint states a claim against Vesco & Co. for violation of the 1934 Act and, therefore, this Court has subject matter jurisdiction with respect to said claims.

11. Proper service having been made upon Vesco & Co., this Court has jurisdiction over its person.

E. Motion by defendant Eisenhower to dismiss the complaint for lack of subject matter jurisdiction and lack of personal jurisdiction

12. The complaint states a claim against defendant Eisenhower for violation of the 1934 Act and, therefore, this Court has subject matter jurisdiction with respect to said claims.

13. Proper service having been made upon defendant Eisenhower, this Court has jurisdiction over his person.

Dated: New York, New York

July 2, 1973

DAVID M. BUTOWSKY, ESQ.  
230 Park Avenue  
New York, New York  
725-5360

SHEA GOULD CLIMENKO & KRAMER

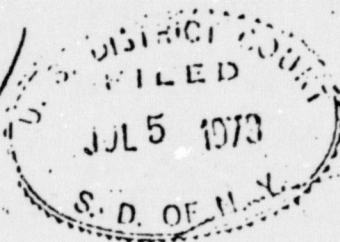
By: Shea Gould

A Member of the Firm  
330 Madison Avenue  
New York, New York  
661-3200

Attorneys for Plaintiff



18  
 UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK



-----x  
 INTERNATIONAL CONTROLS CORP., :

Plaintiff, :

73 Civ. 2518 (CES)

-against- :

ORDER

ROBERT L. VESCO, et al., :

Defendants. :

-----x  
 Plaintiff International Controls Corp., having moved  
 this Court by Order to Show Cause dated June 8, 1973 for an  
 order:

1. Enjoining, pendente lite, defendants Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation, their directors, officers, agents, servants, employees and attorneys and those acting in concert with them, from prosecuting or taking any steps in furtherance of (i) an action entitled "Fairfield General Corporation, a New Jersey corporation, Fairfield Aviation Corporation, a New Jersey corporation, and Skyways Leasing Corporation, a New Jersey corporation, plaintiffs, v. International Controls Corporation, a corporation of the State of Florida, defendant" pending in the Superior Court of New Jersey Chancery Division, Essex County, and (ii) an action entitled "Skyways Leasing Corporation, a New

Jersey corporation v. International Controls Corporation, a Florida corporation", Docket No. L-28210-73, pending in

the Superior Court of New Jersey, Law Division, Essex

County, pending final determination of International Controls Corp. v. Robert L. Vesco et al; and

2. Enjoining, pendente lite, defendants Robert L. Vesco, Vesco & Co., Skyways Leasing Corporation, Fairfield General Corporation, Fairfield Aviation Corporation, Frank G. Beatty, Joel Grady and Alwyn Eisenhower, from, directly or indirectly, using, selling, encumbering or otherwise disposing of the following properties without the approval of the Court:

- (i) 846,380 shares of common stock of International Controls Corp. held of record by defendant Vesco & Co.;
- (ii) 122,463 shares of common stock of International Controls Corp. held of record by defendant Robert L. Vesco;
- (iii) common stock of defendant Fairfield General Corporation owned or controlled by defendants Robert L. Vesco and Vesco & Co.;
- (iv) capital stock of defendant Fairfield Aviation Corporation, a wholly-owned subsidiary of defendant Fairfield General Corporation;
- (v) capital stock of defendant Skyways Leasing Corporation, a wholly-owned subsidiary of defendant Fairfield Aviation Corporation;
- (vi) a Boeing 707 (registered number N11RV) title to which is in defendant Skyways Leasing



Corporation, or the proceeds of the sale of the Boeing 707 if it has already been sold, or any other moneys or assets of defendants Fairfield General Corporation, Fairfield Aviation Corporation or Skyways Leasing Corporation; and

(vii) any and all other assets or property of such companies.

and by Order to Show Cause dated June 22, 1973 for an order enjoining, pendente lite, defendant Vesco & Co., Inc., its directors, officers, agents, servants, employees and attorneys and those acting concert with it, from prosecuting or taking any steps in furtherance of an action entitled "Vesco & Co., Inc. v. Lawrence B. Richardson, Jr., et al.", Docket No. C-3448-72, pending in the Superior Court of New Jersey Chancery Division, Bergen County, pending final determination of the within action.

AND defendant Vesco & Co., Inc. having moved this Court by Notice of Motion dated June 29, 1973 for an order dismissing the complaint and all proceedings in the within action as to said defendant for lack of jurisdiction, insufficiency of service of process and insufficiency of the complaint;

AND defendants Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation having moved this Court orally (and by memorandum of law in support thereof) for an order dismissing the complaint and all proceedings against them in the within action for lack of jurisdiction, insufficiency of service of process and insufficiency of the complaint;

AND defendant Alwyn Eisenhower, having moved this Court by Notice of Motion (undated) for an order quashing service upon said defendant in the within action;

NOW, upon reading the affidavits of David M. Butowsky,

sworn to June 7, June 18 and June 22, 1973, of Allen M. Shinn, sworn to June 6, 1973, of Laurence Richardson, Jr., sworn to June 7, 1973 and Malcolm McAlpin, sworn to June 7, 1973 in support of plaintiff's motions and the affidavit of Joel M. Grady, sworn to June 26, 1973 in opposition to plaintiff's motion; the affidavit of Milton H. Stern sworn to June 12, 1973 in support of Vesco & Co. Inc.'s motion; and the affidavit of Howard A. Singer, sworn to June 12, 1973 in support of defendant Eisenhower's motion; and said motions having been heard on June 27, 1973 before the Hon. Charles E. Stewart, and upon the <sup>affidavits of the parties and the evidence presented</sup> ~~opinion of the Court~~ <sup>advised by the Court and incorporated in this order</sup> ~~advised by the Court~~ dated July 2, 1973, it is hereby

ORDERED, that defendants Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation, their directors, officers, agents, servants, employees and attorneys and those acting in concert with them are enjoined, pendente lite, from prosecuting or taking any steps in furtherance of (i) an action entitled "Fairfield General Corporation, a New Jersey corporation, and Skyways Leasing Corporation, a New Jersey corporation, Plaintiffs, v. International Controls Corporation, a corporation of the State of Florida, Defendant" pending in the Superior Court of New Jersey, Chancery Division, Essex County, and (ii) an action entitled "Skyways Leasing Corporation, a New Jersey corporation v. International Controls Corporation, a Florida corporation", Docket No. L-28210-73, pending in the Superior Court of New Jersey, Law Division, Essex County, pending final determination of the within action, and it is further

ORDERED, that defendants Skyways Leasing Corporation, Fairfield General Corporation, Fairfield Aviation Corporation, Frank G. Beatty, Joel Grady and Alwyn Eisenhower are enjoined,



pendente lite, from directly or indirectly, using, selling, encumbering, transferring or otherwise disposing of the following properties without the approval of the Court:

(i) capital stock of defendant Fairfield Aviation Corporation, a wholly owned subsidiary of defendant Fairfield General Corporation;

(ii) capital stock of defendant Skyways Leasing Corporation, a wholly owned subsidiary of defendant Fairfield Aviation Corporation;

(iii) a Boeing 707 (registered number N11RV) title to which is in defendant Skyways Leasing Corporation, or the proceeds of the sale of the Boeing 707 if it has already been sold; or any other moneys or assets of defendants Fairfield General Corporation, Fairfield Aviation Corporation or Skyways Leasing Corporation;

and it is further

ORDERED, that defendants Robert Vesco and Vesco & Co., Inc. are enjoined, pendente lite, from directly or indirectly using, selling, encumbering, transferring or otherwise disposing of:

(i) 846,380 shares of common stock of International Controls Corp. held of record by defendant Vesco & Co.;

(ii) 122,463 shares of common stock of International Controls Corp. held of record by defendant Robert L. Vesco;

(iii) common stock of defendant Fairfield General Corporation owned or controlled by defendants Robert L. Vesco and Vesco & Co.;

and it is further

ORDERED, that defendant Vesco & Co., Inc., its direct-

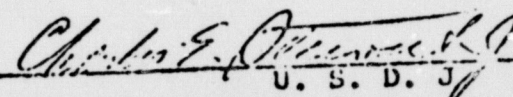
acting in concert with it, are enjoined, pendente lite, from prosecuting or taking any steps in furtherance of an action entitled "Vesco & Co., Inc. v. Lawrence B. Richardson, Jr., et al.", Docket No. C-3488-72, pending in the Superior Court of New Jersey, Chancery Division, Bergen County, pending final determination of the within action; and it is further

ORDERED, that the motions of defendant Vesco & Co., Inc., Fairfield General Corporation, Fairfield Aviation Corporation and Always Learning Corporation to dismiss the complaint and all proceedings in the within action, be, and the same hereby are denied in all respects; and it is further

ORDERED, that the motion of defendant Alwyn Eisenhower to quash service in the within action be, and the same hereby is denied in all respects.

Dated: New York, New York

July 3, 1973

  
U. S. D. J.